

Message Text

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43/46

ACTION SCI-06

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R 031436Z OCT 73

FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC 3481

INFO AEC GERMANTOWN

AMEMBASSY BONN

USMISSION EC BRUSSELS

AMEMBASSY TOKYO

C O N F I D E N T I A L IAEA VIENNA 8187

C O R R E C T E D COPY (FOR MRN 8187 VICE 817)

REF: (A) STATE 187563 (NOTAL); B(B) STATE 185514 (NOTAL)

(C) IAEA VIENNA 6283

SUMMARY: IN FOURTH NEGOTIATING SESSION, US GAVE IAEA OUR DRAFT OF PROTOCOL TO PROPOSED AGREEMENT AND EXPLAINED OUR CONCEPT OF FACILITY ATTACHMENTS ON ANY OR ALL ELIGIBLE US NUCLEAR FACILITIES, AT AGENCY'S DISCRETION. WE PROPOSED EXCLUSION FROM LIST OF ELIGIBLE US FACILITIES OF THOSE LOCATIONS WITH MINIMAL QUANTITIES OF MATERIAL BY DEFINING FACILITIES AS IN INFCIRC/153. WE DEFERRED RESPONSE TO AGENCY'S COMMENTS ON MAIN BODY OF AGREEMENT, AGREEING TO CONSIDER THEM IN NEW DRAFT OF PARTS I AND II AND PROTOCL WHICH WE WOULD ENDEAVOR TRANSMIT TO IAEA BY OCT 19. NEXT NEGOTIATING SESSION WILL FOLLOW AGENCY'S STUDY OF THIS RE-DRAFT. PROGRESS ON REPORTING OF INTERNATIONAL TRANSFERS REPORTED SEPTEL. ACTION REQUIRED: NONE.

1. US AND IAEA NEGOTIATORS (LOPEZ, RAMES, FRENZEL, AND RYZHOV) MET SEPT 26. US RESREP PORTER EXPLAINED THAT WE WERE NOT YET READY TO RESPOND TO COMMENTS GIVEN US IN PREVIOUS MEETING (REF C) ON PARTS I AND II OF OUR DRAFT. HOWEVER, IN ORDER TO EVALUATE AGENCY'S COMMENTS, WE HAD FOUND IT NECESSARY TO DRAFT A PROTOCOL AND WE WANTED GIVE AGENCY RESULT. WE HAD DECIDED TO PERMIT PREP-CONFIDENTIAL

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ARATION OF FACILITY ATTACHMENTS ON ANY OR ALL US ELIGIBLE FACILITIES AT AGENCY DISCRETION. SINCE PARTS I AND II APPLY, UNDER OUR BASIC CONCEPT, ONLY TO THOSE ELIGIBLE FACILITIES WHICH AGENCY HAS SELECTED FOR INCLUSION IN SUBSIDIARY ARRANGEMENTS,

PROVISION FOR FACILITY ATTACHMENTS ON REMAINING ELIGIBLE FACILITIES IS MADE IN PROTOCOL. WE HAVE DUBBED THESE "PROVISIONAL FACILITY ATTACHMENTS" (PFA), WHICH IS NOT VERY SATISFACTORY LABEL; WE WILL TRY TO FIND BETTER ONE IN REDRAFT.

2. WE NOTED THAT PROTOCOL DID NOT REFLECT THE ALTERNATIVE APPROACH SUGGESTED TO US BY LOPEZ AT LAST MEETING (PARA 9 REF C). WE DID NOT PLAN TO PURSUE THAT APPROACH AT THIS TIME.

3. WE POINTED OUT THAT IN DRAFTING PROTOCOL WE HAD REFERRED ONLY TO "FACILITIES" RATHER THAN TO "FACILITIES AND OTHER LOCATIONS" AS WE HAD IN PARTS I AND II. THIS WAS DELIBERATE OMISSION, AND WE PROPOSED OMIT "AND OTHER LOCATIONS" IN FINAL TEXT OF PARTS I AND II AS WELL. BY LIMITING AGREEMENT'S COVERAGE TO "FACILITIES", WHICH ARE DEFINED IN PARA 106 OF INFCIRC/153 AND IDENTICALLY DEFINED IN ART 98(I) OF OUR DRAFT, WE SOLVE "DE MINIMUS" PROBLEM OF WHAT TO DO WITH HUNDREDS OF US LOCATIONS (HOSPITALS, UNIVERSITIES) WITH MINIMAL QUANTITIES OF NUCLEAR MATERIAL.

4. WE EXPLAINED THAT, ALTHOUGH THIS NOT EXPLICIT IN OUR DRAFTS, WE WERE IN EFFECT GROUPING ALL US NUCLEAR FACILITIES INTO FIVE CATEGORIES: (A) THOSE DETERMINED BY USG TO BE ELIGIBLE UNDER OUR OFFER AND SELECTED BY AGENCY FOR APPLICATION OF ITS SAFEGUARDS. (WE REAFFIRMED THAT WE USED WORD "SAFEGUARDS" ONLY IN FULL INFCIRC/153 SENSE); (B) THOSE ELIGIBLE FACILITIES TO WHICH AGENCY DOES NOT WISH, AT ANY GIVEN TIME, TO APPLY SAFEGUARDS, BUT FOR WHICH IT DOES WISH TO HAVE "PROVISIONAL FACILITY ATTACHMENTS" PREPARED; (C) THOSE REMAINING ELIGIBLE FACILITIES, IF ANY, TO WHICH AT ANY GIVEN TIME AGENCY IS NOT APPLYING SAFEGUARDS AND FOR WHICH FACILITY ATTACHMENTS ARE NOT PREPARED; (D) THOSE LOCATIONS IN US WHICH FALL OUTSIDE OF INFCIRC /153 DEFINITION OF FACILITY AND THEREFORE ARE NOT ON ELIGIBLE LIST; (E) THOSE FACILITIES EXCLUDED BY USG FROM OUR ELIGIBLE LIST BECAUSE OF THEIR DIRECT NATIONAL SECURITY SIGNIFICANCE. CATEGORIES (B) AND (C) COULD, IN THEORY, BOTH BE EMPTY, IF AGENCY CHOSE PUT ENTIRE ELIGIBLE LIST IN (A). (COMMENT: AGENCY CONFIDENTIAL

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TEAM WELL AWARE THIS POSSIBILITY PURELY HYPOTHETICAL.) MORE LIKELY POSSIBILITY, AND ONE WE ENTIRELY PREPARED TO ACCEPT, IS THAT IN TIME (C) WOULD BECOME EMPTY, IF AGENCY DESIRED PUT ALL ELIGIBLE FACILITIES UNDER EITHER (A) OR (B) THERE WOULD BE NO RESTRICTION ON AGENCY'S ABILITY MOVE FACILITIES AT ANY TIME TO OR FROM FIRST THREE CATEGORIES, OTHER THAN REQUIREMENT TO AVOID DISCRIMINATORY TREATMENT AS BETWEEN US COMMERCIAL FIRMS. BASIC TENET OF OUR CONCEPT WAS THAT AGENCY SHOULD HAVE MAXIMU

FLEXIBILITY IN MOVEMENT OF ELIGIBLE FACILITIES BETWEEN FIRST THREE CATEGORIES.

5. AGENCY TEAM DID NOT COMMENT ON ANY PART OF OUR PRESENT-

ATION, AS THEY WERE HEARING CONCEPTS FOR FIRST TIME, BUT LIMITED THEMSELVES TO ASKING QUESTIONS, E.E.:

A. WOULD EITHER REGULAR FACILITY ATTACHMENTS PURSUANT TO PART II, OR PFA PURSUANT TO PROTOCOL, CONTAIN ESTIMATE OF AGENCY'S ACTUAL ROUTINE INSPECTION EFFORT (ARE)? ANSWER: WE DO NOT YET KNOW ANSWER TO THAT QUESTION; WE WILL GIVE IT SOME THOUGHT.

B. IF ELIGIBLE FACILITY IS MOVED BY AGENCY FROM CATEGORY (A) TO (B), WOULD IT BE NECESSARY AMEND TEXT OF ITS FACILITY ATTACHMENT? ANSWER: PERHAPS NOT, IF FACILITY'S STATUS AND EFFECT OF MOVE WERE CLEAR TO ALL.

C. IF FACILITY WERE MOVED FROM (A) TO (B), AND BACK TO (A), WOULD ITS ESTIMATED ARIE REMAIN THE SAME OR WOULD IT HAVE TO BE RE-NEGOTIATED WHEN IT RE-ENTERS CATEGORY (A)? ANSWER: WE HAVE NOT ADDRESSED QUESTION OF WHETHER WE WANT TO INCLUDE ESTIMATE OF ARIE IN FACILITY ATTACHMENTS.

D. ARTICLE 109 OF PROTOCOL REFERS TO VISITS TO CATEGORY (B) FACILITIES BY INSPECTORS. COULD THESE BE CONSIDERED INSPECTIONS OF ANY KIND? ANSWER: NO. SUCH VISITS WILL NOT BE AD HOC, ROUTINE, OR ANY OTHER KIND OF INSPECTION.

E. WOULD REPORTS TO BE SUBMITTED BY FACILITIES IN CATEGORIES (A) AND (B) COME TO AGENCY FROM USAEC OR DIRECTLY FROM FACILITIES? ANSWER: IN BOTH CASES, FROM USAEC. WITH REGARD TO CATEGORY (C) FACILITIES, NO REPORTS ARE PROVIDED FOR IN OUR DRAFTS. IF IT COULD BE DEMONSTRATED THAT THEY WOULD BE OF UTILITY TO THE AGENCY, HOWEVER, WE MIGHT CONSIDER SEPARATE INFORMAL UNDERSTANDING UNDER WHICH AGENCY WOULD RECEIVE COPY OR MAGNETIC TAPE OF REPORTS MADE BY SUCH FACILITIES TO AEC, IN ACCORDANCE WITH US DOMESTIC SYSTEM'S REQUIREMENTS.
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6. AS NEXT STEP, US NEGOTIATORS OFFERED PROVIDE AGENCY WITH COMPLETE RE-DRAFT OF BOTH PARTS I AND II AND PROTOCOL, TAKING INTO ACCOUNT OUR LATEST INSTRUCTIONS (REF A); AGENCY'S COMMENTS IN PREVIOUS NEGOTIATING SESSIONS, TO EXTENT WE ARE ABLE TO ACCEPT THEM, AND CHANGES IN PARTS I AND II MADE NECESSARY BY NEW APPROACH USED IN PROTOCOL. IT WAS AGREED THIS WOULD BE SUBMITTED BY OCT 19 OR AS SOON THEREAFTER AS POSSIBLE. AGENCY WOULD STUDY RE-DRAFT AND DATE FOR NEW SESSION WOULD BE SET WHEN AGENCY PREPARED RESPOND. PORTER

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